

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2198 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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MUNICIPAL COMMISSIONER

Versus

YUGRAJ GABILAL SURTI

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Appearance:

MR NIKHIL KARIEL FOR MR BP TANNA for Petitioners  
MR NK MAJMUDAR for Respondent No. 1, 2

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 08/12/2000

ORAL JUDGEMENT

1. The petitioners challenge the award dated January  
03, 1989 of the Labour Court, Ahmedabad in Reference  
No.1115/84 reinstating the respondent to his original  
position with backwages.

2. According to the respondent - workman, he was working as a tailor since 1st September 1978 in the hospital of the Municipal Corporation. His services came to be terminated on 22nd January 1983 without any notice or payment of retrenchment compensation, as required by the law.

3. The Tribunal, on the basis of the material on record, came to a finding that the services of the respondent - workman were terminated in contravention of the provision of section 25-F of the Industrial Disputes Act, on 22nd January, 1983.

4. It is contended on behalf of the petitioners that in fact the sister of the respondent - employee was working as a tailor, and therefore, the respondent could not have been reinstated as a tailor. This contention is raised for the first time in the petition, and therefore, cannot be countenanced. It was then argued that, during the pendency of the proceedings before the Labour Court, an order was issued by the concerned authority appointing the respondent as a ward boy and since the respondent did not accept that appointment, he should not be given any backwages.

5. The Tribunal has taken into account the depositions of the respondent - workman and Dr. Sunil Manek, at exh. 10 and 15 respectively, and also the attendance register at exh. 12. The Tribunal, on the basis of this material, reached to a finding that the respondent - employee was in fact working as a tailor in the hospital, and that his services were terminated contrary to law on 22nd January 1983. It is not open for this Court to go behind this finding of fact while exercising its powers under Article 227 of the Constitution. The Tribunal acted in lawful exercise of its jurisdiction in making the impugned award, which is based on the evidence which was led before the Tribunal. There is therefore absolutely no warrant for interfering with the award of the Tribunal. The contention that because during the pendency of the proceedings the respondent employee was offered the post of ward boy, and he did not accept it, backwages should not be awarded, is misconceived. The respondent was not bound to accept an appointment to a lower post of ward boy which was offered during the pendency of the proceedings. Therefore, on this ground, there is no warrant for interfering with the impugned award.

6. The petition is therefore rejected. Rule is discharged with no orders as to costs. Interim relief

stands vacated.

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